

JAN - 7 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

Federal Communications Commission
Office of Secretary

In the Matter of)

SOUTHWESTERN BELL MOBILE)
SYSTEMS, INC.)

Petition for a Declaratory Ruling)
Regarding the Just and Reasonable Nature)
of, and State Law Challenges to,)
Rates charged by CMRS Providers)
When Charging for Incoming Calls and)
Charging for Calls in)
Whole-Minute Increments.)
Commission's Rules)

99-263
DA 97-2464

COMMENTS OF
AMERITECH

I. Introduction

Ameritech files these Comments in the above-captioned proceeding, in response to the request of the Federal Communications Commission ("Commission") for public comment thereon.¹ In this matter, Southwestern Bell Mobile Systems, Inc. (hereinafter "SBMS") seeks Declaratory Rulings regarding several aspects of a class-action lawsuit. In

¹ Public Notice, DA 97-2464, rel. November 24, 1997.

that suit, damages are sought because of an alleged SBMS practice of setting rates and billing for certain calls over its system in whole-minute increments.²

Ameritech fully supports the Petition of SBMS. In particular, SBMS is clearly entitled to Declaratory Rulings that: (1) Congress and the Commission have established a general preference that competitive forces, rather than regulation, should govern the CMRS marketplace; and (2) the practice complained of in the lawsuit at issue represents "the rates charged" by CMRS providers, as that term is used in Section 332(c)(3) of the Communications Act.

II. Federal policy clearly favors competition over regulation in the CMRS marketplace.

There can be no question that reliance upon the forces of competition rather than regulation is a basic tenet of today's federal telecommunications policy. Perhaps the clearest statement of this policy can be found in the Preamble of the 1996 Telecommunications Act: the purpose of the Act is "(t)o promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers ...".³

It is also obvious that this overall federal policy approach has been applied by both Congress and the Commission to the CMRS marketplace. As SBMS noted in its Petition, Congress specifically enacted Section

² In the Matter of SOUTHWESTERN BELL MOBILE SYSTEMS, INC. Petition for a Declaratory Ruling Regarding the Just and Reasonable Nature of, and State Law Challenges to, Rates Charged by CMRS Providers When Charging for Incoming Calls and Charging for Calls in Whole-Minute Increments, Petition for Declaratory Ruling, filed November 12, 1997 (hereinafter "Petition").

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

332(c)(3) of the Act⁴ in order to reflect "a general preference in favor of reliance on marketplace forces rather than regulation"⁵, and the Commission has in fact followed this directive in its treatment of the CMRS marketplace.⁶ For example, in adopting its preemption rules under the statute, the Commission noted that its rules "will help promote investment ... by preventing burdensome and unnecessary state regulatory practices that impede our Federal mandate ...".⁷ The Commission later applied these rules in rejecting eight state utility commission applications to retain regulatory jurisdiction over CMRS rates and entry.⁸

The consumer benefits flowing from this policy foundation are now abundantly clear. Earlier this year, the Commission reported to Congress that since it has "continued systematically to remove regulatory barriers in order to facilitate competition",⁹ available data indicate that "competition is

⁴ 47 U.S.C. § 332(c)(3).

⁵ Petition, at 4.

⁶ Petition, at 4-5 (fn. 6-9).

⁷ Implementation of Section 3(n) and 332 (o) of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1421 (1994).

⁸ See, e.g., In the Matter of Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services, PR Docket No 94-109, Report and Order, 10 FCC Rcd 7842 (1995).

⁹ In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993: Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Second Report, released March 25, 1997 (hereinafter "Second Report"), at 3. The Commission also reported that "(t)his trend toward reduced regulation is continuing." Ibid.

developing throughout the [wireless] industry”¹⁰, “(t)he introduction of digital-based technology has accelerated”¹¹, and “package prices will continue to decline in response to the increase of service options available to consumers, which is creating a general downward pressure on ... pricing”.¹² These clear indications of the real-world benefits of the Commission’s pro-competitive policy cannot be ignored or denied.

III. Pricing structures such as “whole-minute pricing” constitute “the rates charged” for CMRS under Section 332(c)(3).

Section 332 (c)(3) completely strips state and local regulators of any authority to regulate the entry of or “rates charged”¹³ by CMRS providers. Since the “whole-minute pricing” structure described in the Petition necessarily determines the rates which SBMS (and any other CMRS provider electing to offer its customers such a pricing plan) charges for its services, the clear and unambiguous language chosen by Congress prohibits states from regulating this “rate” structure in any manner. Thus, the plain meaning of the statute entitles SBMS to the ruling it seeks as to this point.

A contrary ruling permitting any state regulation of the conduct involved would also directly contradict to Congress’ intent in enacting Section 332(c)(3). As SBMS correctly asserts, if the pricing structures offered by CMRS providers were constrained or regulated by state law, Congress’ clearly-expressed intent in Section 332(c)(3) to preempt such

¹⁰ Ibid., at 6.

¹¹ Id.

¹² Ibid., at 13.

¹³ 47 U.S.C. §332(c)(3).

regulation would be thwarted.¹⁴ If state Courts were permitted to regulate the pricing plans available to CMRS consumers (including, e.g., the "whole-minute" pricing structure offered by SBMS and other CMRS providers), the resulting application of fifty states' jurisprudence to the entire field would reduce competition and innovation in the CMRS marketplace. Moreover, state pricing regulation would curtail the timeliness and flexibility of CMRS providers' competitive responses to consumers' needs.

The benefits of competition in the CMRS marketplace, as exemplified by the steadily-increasing breadth of available CMRS offerings, cannot reasonably be debated. One likely reason cited by the Commission for this phenomenon is that "cellular operators have expanded the range of service offerings and price plans, thus making cellular service more affordable and attractive to more consumers".¹⁵ This is precisely the result which Congress sought in enacting Section 332(c)(3), and such results clearly would be thwarted by state regulation of CMRS pricing arrangements such as "whole-minute" pricing.

IV. Conclusion

For the foregoing reasons, the Commission should issue the Declaratory Rulings sought by SBMS. In particular, the Commission should explicitly hold that (1) Federal policy, as adopted by Congress and

¹⁴ Petition, at 14-17.

¹⁵ Second Report, at 11.

the Commission, includes a general preference that competitive forces, rather than regulation, should govern the CMRS marketplace; and (2) "whole-minute pricing" is a practice that represents "the rates charged" by CMRS providers, as that term is used in Section 332(c)(3) of the Communications Act.

Respectfully submitted

A handwritten signature in cursive script, reading "Frank M. Panek", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Edith Smith, do hereby certify that a copy of the foregoing Comments of Ameritech has been served on the parties listed below via first class mail, postage prepaid on this 7th day of January, 1998.

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